Editor's note: Appealed -- aff'd, Civ.No. 85-3005 (D.Idaho June 11, 1987)

LAMAR BURNETT ET UX.

IBLA 84-549 Decided December 19, 1984

Appeal from a decision of the Idaho State Office, Bureau of Land Management, declaring placer mining claim null and void ab initio in part. IMC 72183.

Affirmed.

1. Mining Claims: Determination of Validity -- Mining Claims: Lands Subject to -- Segregation -- Withdrawals and Reservations: Effect of

   A mining claim located on land segregated and closed to mineral entry by notation of an application for withdrawal in the official BLM records is null and void ab initio.

2. Administrative Procedure: Hearings -- Constitutional Law: Due Process -- Mining Claims: Hearings -- Rules of Practice: Hearings

   Due process does not require notice and a prior hearing in every case that an individual is deprived of property so long as the individual is given notice and an opportunity to be heard before the deprivation becomes final.

APPEARANCES: Claude Marcus, Esq., Boise, Idaho, for appellant; Robert S. Burr, Esq., Boise, Idaho, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE BURSKI

Lamar and Christine Burnett have appealed from a decision of the Idaho State Office, Bureau of Land Management (BLM), dated March 26, 1984, declaring the El Gaucho placer mining claim null and void ab initio in part. The El Gaucho claim, embracing lots 6 and 10 of sec. 2, and lots 2 and 3 of sec. 11, T. 25 N., R. 1 E., Boise Meridian, was located on December 31, 1981. In its decision, BLM noted that the claim is located along the Salmon River, and that the Wild and Scenic Rivers Act of October 2, 1968, 82 Stat. 906, as supplemented by a BLM proposed withdrawal I-7322, dated October 1, 1973, had withdrawn all land within one-fourth mile of the Salmon River from mineral entry. Accordingly, BLM held that so much of the claim as was located within one-fourth mile of the Salmon River (i.e., all of the claim except a small sliver of land in lot 10, sec. 2 and lot 2, sec. 11) was null and void ab initio.

[1] Appellants timely filed a notice of appeal. In this document, appellants contended that there had been no valid withdrawal of the land from mineral entry and that the decision was "arbitrary, without legal ground and entered prematurely without notice and an opportunity for hearing." It must be noted, however, that these general allegations of error were not supported by either legal citations or factual analysis.

In any event, as appellants were doubtless aware, the Board had recently addressed the effect of the withdrawals effectuated by the Wild and Scenic Rivers Act and the proposed withdrawal, I-7322. In Lamar & Christine Burnett, 78 IBLA 349 (1984), we noted that the notation of the application for withdrawal segregated the land from entry to the extent that the withdrawal, if effected, would prevent such entry, citing 43 CFR 2091.2-5 (1973). As we further pointed out, pursuant to section 204 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1714 (1982), the lands will remain segregated until October 20, 1991, unless the segregation is expressly terminated sooner. 1/

[2] Insofar as appellants' argument that the decision was issued without notice or opportunity for hearing is concerned it is sufficient to point out that where the validity of a mining claim depends upon the status of the land sought to be claimed, which status can be determined from the records of BLM, no hearing is needed. See United States v. Consolidated Mines & Smelting Co., 455 F.2d 432, 453 (9th Cir. 1971); Dorothy Smith, 44 IBLA 25, 29 (1979). BLM correctly held that portion of the claim within one-fourth mile of the Salmon River to be null and void ab initio.

We must note that on October 29, 1984, counsel for BLM requested that the Board expedite consideration of this appeal, stating that appellant was in the process of removing reserved minerals from the land and that BLM's ability to control surface activity was limited because the claim embraced land which had been patented under the Stock-Raising Homestead Act (SRHA), as amended, 43 U.S.C. § 291 (1970).

That all commercial deposits of minerals in lands patented under the SRHA are owned by the United States was clearly reiterated by the United States Supreme Court in Watt v. Western Nuclear, Inc., 103 S.Ct. 2218 (1983). 2/ Moreover, our decision in Lamar & Christine Burnett, supra, which issued on January 25, 1984, exhaustively examined appellants' contentions and rejected them. Thus, removal of Government minerals from land withdrawn from mineral entry, subsequent to that decision, would seem to constitute a knowing and willful trespass without color of right for which the United States must be compensated. See generally 43 CFR Subpart 9239. Appellants had clearly been forewarned.

1/ Moreover, we note that the Mineral Title Plat Supplement for secs. 2, 11, 14, and 23 of T. 25 N., R. 1 E., Boise Meridian, also indicates that there is a power project withdrawal embracing land along the east boundary of lot 3, sec. 11. Thus, this land was doubly withdrawn from location. See Marion Stevens, 64 IBLA 69 (1982); State of Alaska, 20 IBLA 341 (1975). 2/ The exception relating to removal of sand or gravel deposits where essential for stock raising or the cultivation of crops is clearly nonapplicable. See Browne-Tankersley Trust, 76 IBLA 48, 50 n.2 (1983).

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

James L. Burski
Administrative Judge

We concur:

Gail M. Frazier
Administrative Judge

Will A. Irwin
Administrative Judge